

547 U.S. 715, 126 S.Ct. 2208, 62 ERC 1481, 165 L.Ed.2d 159, 74 USLW 4365, 36 Env'tl. L. Rep. 20,116, 06 Cal. Daily Op. Serv. 5260, 2006 Daily Journal D.A.R. 7661, 19 Fla. L. Weekly Fed. S 275
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(“Additionally, we invite your views as to whether any other revisions are needed to the existing regulations on which waters are jurisdictional under the CWA”); *id.*, at 1992 (“Today’s [notice of proposed rulemaking] seeks public input on what, if any, revisions in light of *SWANCC* might be appropriate to the regulations that define ‘waters of the U.S.’, and today’s [notice] thus would be of interest to *all entities* discharging to, or regulating, *such waters*” (emphasis added)). The agencies can decide for themselves whether, as the *SWANCC* dissenter suggests, it was wise for them to take no action in response to *SWANCC*.

Justice [KENNEDY](#), concurring in the judgment.

*759 These consolidated cases require the Court to decide whether the term “navigable waters” in the Clean Water Act extends to wetlands that do not contain and are not adjacent to waters that are navigable in fact. In *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers*, 531 U.S. 159, 121 S.Ct. 675, 148 L.Ed.2d 576 (2001) (*SWANCC*), the Court held, under the circumstances presented there, that to constitute “‘navigable waters’” under the Act, a water or wetland must possess a “significant nexus” to waters that are or were navigable in fact or that could reasonably be so made. *Id.*, at 167, 172, 121 S.Ct. 675. In the instant cases neither the plurality opinion nor the dissent by Justice STEVENS chooses to apply this test; and though the Court of Appeals recognized the test’s applicability, it did not consider all the factors necessary to determine whether the lands in question had, or did not have, the requisite nexus. In my view the cases ought to be remanded to the Court of Appeals for proper consideration of the nexus requirement.

I

Although both the plurality opinion and the dissent by Justice STEVENS (hereinafter the dissent) discuss the background of these cases in some detail, a further discussion of the relevant statutes, regulations, and facts may clarify the analysis suggested here.

A

The “objective” of the Clean Water Act (or Act) is

“to restore and maintain the chemical, physical, and biological integrity **2237 of the Nation’s waters.” 33 U.S.C. § 1251(a). To *760 that end, the statute, among other things, prohibits “the discharge of any pollutant by any person” except as provided in the Act. § 1311(a). As relevant here, the term “discharge of a pollutant” means “any addition of any pollutant to navigable waters from any point source.” § 1362(12). The term “pollutant” is defined as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” § 1362(6). The Secretary of the Army, acting through the Chief of Engineers of the Army Corps of Engineers, may issue permits for “discharge of dredged or fill material into the navigable waters at specified disposal sites.” §§ 1344(a), (c), (d); but see § 1344(f) (categorically exempting certain forms of “discharge of dredged or fill material” from regulation under § 1311(a)). Pursuant to § 1344(g), States with qualifying programs may assume certain aspects of the Corps’ permitting responsibility. Apart from dredged or fill material, pollutant discharges require a permit from the Environmental Protection Agency (EPA), which also oversees the Corps’ (and qualifying States’) permitting decisions. See §§ 1311(a), 1342(a), 1344(c). Discharge of pollutants without an appropriate permit may result in civil or criminal liability. See § 1319.

The statutory term to be interpreted and applied in the two instant cases is the term “navigable waters.” The outcome turns on whether that phrase reasonably describes certain Michigan wetlands the Corps seeks to regulate. Under the Act “[t]he term ‘navigable waters’ means the waters of the United States, including the territorial seas.” § 1362(7). In a regulation the Corps has construed the term “waters of the United States” to include not only waters susceptible to use in interstate commerce—the traditional understanding of the term “navigable waters of the United States,” see, e.g., *761 *United States v. Appalachian Elec. Power Co.*, 311 U.S. 377, 406-408, 61 S.Ct. 291, 85 L.Ed. 243 (1940); *The Daniel Ball*, 10 Wall. 557, 563-564, 19 L.Ed. 999 (1871)—but also tributaries of those waters and, of particular relevance here, wetlands adjacent to those waters or their tributaries. 33 CFR §§ 328.3(a)(1), (5), (7) (2005). The Corps views tributaries as within its jurisdiction if they carry a perceptible “ordinary high water mark.” § 328.4(c);

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[65 Fed.Reg. 12823 \(2000\)](#). An ordinary high-water mark is a “line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.” [33 CFR § 328.3\(e\)](#).

Contrary to the plurality's description, *ante*, at 2215, 2222, wetlands are not simply moist patches of earth. They are defined as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.” [§ 328.3\(b\)](#). The Corps' Wetlands Delineation Manual, including over 100 pages of technical guidance for Corps officers, interprets this definition of wetlands to require: (1) prevalence of plant species typically adapted to saturated soil conditions, determined in accordance with the ****2238** United States Fish and Wildlife Service's National List of Plant Species that Occur in Wetlands; (2) hydric soil, meaning soil that is saturated, flooded, or ponded for sufficient time during the growing season to become anaerobic, or lacking in oxygen, in the upper part; and (3) wetland hydrology, a term generally requiring continuous inundation or saturation to the surface during at least five percent of the growing season in most years. See Wetlands Research Program Technical Report Y-87-1 (on-line edition), pp. 12-34 (Jan.1987), <http://www.saj.usace.army.mil/permit/documents/87manual.pdf> (all Internet materials as visited June 16, 2006, and available in Clerk of Court's case file). Under the Corps' regulations, wetlands are adjacent to tributaries, and thus covered by the Act, even if they are “separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like.” [§ 328.3\(c\)](#).

B

The first consolidated case before the Court, *Rapanos v. United States*, No. 04-1034, relates to a civil enforcement action initiated by the United States in the United States District Court for the Eastern District of Michigan against the owners of three land parcels

near Midland, Michigan. The first parcel, known as the Salzburg site, consists of roughly 230 acres. The District Court, applying the Corps' definition of wetlands, found based on expert testimony that the Salzburg site included 28 acres of wetlands. The District Court further found that “the Salzburg wetlands have a surface water connection to tributaries of the Kawkawlin River which, in turn, flows into the Saginaw River and ultimately into Lake Huron.” App. to Pet. for Cert. B11. Water from the site evidently spills into the Hoppler Drain, located just north of the property, which carries water into the Hoppler Creek and thence into the Kawkawlin River, which is navigable. A state official testified that he observed carp spawning in a ditch just north of the property, indicating a direct surface-water connection from the ditch to the Saginaw Bay of Lake Huron.

The second parcel, known as the Hines Road site, consists of 275 acres, which the District Court found included 64 acres of wetlands. The court found that the wetlands have a surface-water connection to the Rose Drain, which carries water into the Tittabawassee River, a navigable waterway. The final parcel, called the Pine River site, consists of some 200 acres. The District Court found that 49 acres were wetlands***763** and that a surface-water connection linked the wetlands to the nearby Pine River, which flows into Lake Huron.

At all relevant times, John Rapanos owned the Salzburg site; a company he controlled owned the Hines Road site; and Rapanos' wife and a company she controlled (possibly in connection with another entity) owned the Pine River site. All these parties are petitioners here. In December 1988, Mr. Rapanos, hoping to construct a shopping center, asked the Michigan Department of Natural Resources to inspect the Salzburg site. A state official informed Rapanos that while the site likely included regulated wetlands, Rapanos could proceed with the project if the wetlands were delineated (that is, identified and preserved) or if a permit were obtained. Pursuing the delineation option, Rapanos hired a wetlands consultant to survey the property. The results evidently displeased Rapanos: Informed that the site included between 48 and 58 acres of wetlands, Rapanos allegedly threatened to “destroy” the consultant unless he eradicated all traces of his report. Rapanos then ordered \$350,000-worth of earthmoving****2239** and landclearing work that filled in 22 of the 64 wetlands

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acres on the Salzburg site. He did so without a permit and despite receiving cease-and-desist orders from state officials and the EPA. At the Hines Road and Pine River sites, construction work-again conducted in violation of state and federal compliance orders-altered an additional 17 and 15 wetlands acres, respectively.

The Federal Government brought criminal charges against Rapanos. In the suit at issue here, however, the United States alleged civil violations of the Clean Water Act against all the *Rapanos* petitioners. Specifically, the Government claimed that petitioners discharged fill into jurisdictional wetlands, failed to respond to requests for information, and ignored administrative compliance orders. See [33 U.S.C. §§ 1311\(a\), 1318\(a\), 1319\(a\)](#). After a 13-day bench trial, the District Court made the findings noted earlier and, on that basis, upheld the Corps' jurisdiction over wetlands on the *764 three parcels. On the merits the court ruled in the Government's favor, finding that violations occurred at all three sites. As to two other sites, however, the court rejected the Corps' claim to jurisdiction, holding that the Government had failed to carry its burden of proving the existence of wetlands under the three-part regulatory definition. (These two parcels are no longer at issue.) The United States Court of Appeals for the Sixth Circuit affirmed. [376 F.3d 629, 634 \(2004\)](#). This Court granted certiorari to consider the Corps' jurisdiction over wetlands on the Salzburg, Hines Road, and Pine River sites. [546 U.S. 932, 126 S.Ct. 414, 163 L.Ed.2d 316 \(2005\)](#).

The second consolidated case, *Carabell*, No. 04-1384, involves a parcel shaped like a right triangle and consisting of some 19.6 acres, 15.9 of which are forested wetlands. [257 F.Supp.2d 917, 923 \(E.D.Mich.2003\)](#). The property is located roughly one mile from Lake St. Clair, a 430-square-mile lake located between Michigan and Canada that is popular for boating and fishing and produces some 48 percent of the sport fish caught in the Great Lakes, see Brief for Macomb County, Michigan, as *Amicus Curiae* 2. The right-angle corner of the property is located to the northwest. The hypotenuse, which runs from northeast to southwest, lies alongside a man-made berm that separates the property from a ditch. At least under current conditions-that is, without the deposit of fill in the wetlands that the landowners propose-the berm ordinarily, if not always, blocks surface-

water flow from the wetlands into the ditch. But cf. App. 186a (administrative hearing testimony by consultant for Carabells indicating "you would start seeing some overflow" in a "ten year storm"). Near the northeast corner of the property, the ditch connects with the Sutherland-Oemig Drain, which carries water continuously throughout the year and empties into Auvase Creek. The creek in turn empties into Lake St. Clair. At its southwest end, the ditch connects to other ditches that empty into the Auvase Creek and thence into Lake St. Clair.

*765 In 1993 petitioners Keith and June Carabell sought a permit from the Michigan Department of Environmental Quality (MDEQ), which has assumed permitting functions of the Corps pursuant to [§ 1344\(g\)](#). Petitioners hoped to fill in the wetlands and construct 130 condominium units. Although the MDEQ denied the permit, a State Administrative Law Judge directed the agency to approve an alternative plan, proposed by the Carabells, that involved the construction of 112 units. This proposal called for filling in 12.2 acres of the property while creating retention ponds on 3.74 acres. Because the EPA had objected to the permit, jurisdiction **2240 over the case transferred to the Corps. See [§ 1344\(j\)](#).

The Corps' district office concluded that the Carabells' property "provides water storage functions that, if destroyed, could result in an increased risk of erosion and degradation of water quality in the Sutherland-Oemig Drain, Auvase Creek, and Lake St. Clair." *Id.*, at 127a. The district office denied the permit, and the Corps upheld the denial in an administrative appeal. The Carabells, challenging both the Corps' jurisdiction and the merits of the permit denial, sought judicial review pursuant to the Administrative Procedure Act, [5 U.S.C. § 706\(2\)\(A\)](#). The United States District Court for the Eastern District of Michigan granted summary judgment to the Corps, [257 F.Supp.2d 917 \(2003\)](#), and the United States Court of Appeals for the Sixth Circuit affirmed, [391 F.3d 704 \(2004\)](#). This Court granted certiorari to consider the jurisdictional question. [546 U.S. 932, 126 S.Ct. 414, 163 L.Ed.2d 316 \(2005\)](#).

II

Twice before the Court has construed the term "navigable waters" in the Clean Water Act. In [United States v. Riverside Bayview Homes, Inc.](#), [474 U.S.](#)

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121, 106 S.Ct. 455, 88 L.Ed.2d 419 (1985), the Court upheld the Corps' jurisdiction over wetlands adjacent to navigable-in-fact waterways. *Id.*, at 139, 106 S.Ct. 455. The property in *Riverside Bayview*, like the wetlands in the *Carabell* case now before the Court, was located roughly one mile from *766 Lake St. Clair, see *United States v. Riverside Bayview Homes, Inc.*, 729 F.2d 391, 392 (C.A.6 1984) (decision on review in *Riverside Bayview*), though in that case, unlike *Carabell*, the lands at issue formed part of a wetland that directly abutted a navigable-in-fact creek, 474 U.S., at 131, 106 S.Ct. 455. In regulatory provisions that remain in effect, the Corps had concluded that wetlands perform important functions such as filtering and purifying water draining into adjacent water bodies, 33 CFR § 320.4(b)(2)(vii) (1985), slowing the flow of runoff into lakes, rivers, and streams so as to prevent flooding and erosion, §§ 320.4(b)(2)(iv), (v), and providing critical habitat for aquatic animal species, § 320.4(b)(2)(i). 474 U.S., at 134-135, 106 S.Ct. 455. Recognizing that “[a]n agency's construction of a statute it is charged with enforcing is entitled to deference if it is reasonable and not in conflict with the expressed intent of Congress,” *id.*, at 131, 106 S.Ct. 455 (citing *Chemical Mfrs. Assn. v. Natural Resources Defense Council, Inc.*, 470 U.S. 116, 125, 105 S.Ct. 1102, 84 L.Ed.2d 90 (1985), and *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-845, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)), the Court held that “the Corps' ecological judgment about the relationship between waters and their adjacent wetlands provides an adequate basis for a legal judgment that adjacent wetlands may be defined as waters under the Act,” 474 U.S., at 134, 106 S.Ct. 455. The Court reserved, however, the question of the Corps' authority to regulate wetlands other than those adjacent to open waters. See *id.*, at 131-132, n. 8, 106 S.Ct. 455.

In *SWANCC*, the Court considered the validity of the Corps' jurisdiction over ponds and mudflats that were isolated in the sense of being unconnected to other waters covered by the Act. 531 U.S., at 171, 121 S.Ct. 675. The property at issue was an abandoned sand and gravel pit mining operation where “remnant excavation trenches” had “evolv[ed] into a scattering of permanent and seasonal ponds.” *Id.*, at 163, 121 S.Ct. 675. Asserting jurisdiction pursuant to a regulation called the “Migratory Bird Rule,” the Corps argued that these isolated ponds were “waters of the United States” (and thus **2241 “navigable*767 waters” under the Act) because they were used as

habitat by migratory birds. *Id.*, at 164-165, 121 S.Ct. 675. The Court rejected this theory. “It was the significant nexus between wetlands and ‘navigable waters,’ ” the Court held, “that informed our reading of the [Act] in *Riverside Bayview Homes*.” *Id.*, at 167, 121 S.Ct. 675. Because such a nexus was lacking with respect to isolated ponds, the Court held that the plain text of the statute did not permit the Corps' action. *Id.*, at 172, 121 S.Ct. 675.

Riverside Bayview and *SWANCC* establish the framework for the inquiry in the cases now before the Court: Do the Corps' regulations, as applied to the wetlands in *Carabell* and the three wetlands parcels in *Rapanos*, constitute a reasonable interpretation of “navigable waters” as in *Riverside Bayview* or an invalid construction as in *SWANCC*? Taken together these cases establish that in some instances, as exemplified by *Riverside Bayview*, the connection between a nonnavigable water or wetland and a navigable water may be so close, or potentially so close, that the Corps may deem the water or wetland a “navigable water” under the Act. In other instances, as exemplified by *SWANCC*, there may be little or no connection. Absent a significant nexus, jurisdiction under the Act is lacking. Because neither the plurality nor the dissent addresses the nexus requirement, this separate opinion, in my respectful view, is necessary.

A

The plurality's opinion begins from a correct premise. As the plurality points out, and as *Riverside Bayview* holds, in enacting the Clean Water Act Congress intended to regulate at least some waters that are not navigable in the traditional sense. *Ante*, at 2220; *Riverside Bayview*, *supra*, at 133, 106 S.Ct. 455; see also *SWANCC*, *supra*, at 167, 121 S.Ct. 675. This conclusion is supported by “the evident breadth of congressional concern for protection of water quality and aquatic ecosystems.” *Riverside Bayview*, *supra*, at 133, 106 S.Ct. 455; see also *Milwaukee v. Illinois*, 451 U.S. 304, 318, 101 S.Ct. 1784, 68 L.Ed.2d 114 (1981) (describing the Act as “an all-encompassing*768 program of water pollution regulation”). It is further compelled by statutory text, for the text is explicit in extending the coverage of the Act to some nonnavigable waters. In a provision allowing States to assume some regulatory functions of the Corps (an option Michigan has exercised), the Act limits States to issuing permits for:

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“the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their ordinary high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto) within its jurisdiction.” [33 U.S.C. § 1344\(g\)\(1\)](#).

Were there no Clean Water Act “navigable waters” apart from waters “presently used” or “susceptible to use” in interstate commerce, the “other than” clause, which begins the long parenthetical statement, would overtake the delegation of authority the provision makes at the outset. Congress, it follows, must have intended a broader meaning for navigable waters. The mention of wetlands in the “other than” clause, moreover, makes plain that at least some wetlands fall within the scope of the term “navigable waters.” See *Riverside Bayview*, *supra*, at 138-139, and n. 11, 106 S.Ct. 455.

****2242** From this reasonable beginning the plurality proceeds to impose two limitations on the Act; but these limitations, it is here submitted, are without support in the language and purposes of the Act or in our cases interpreting it. First, because the dictionary defines “waters” to mean “water ‘[a]s found in streams and bodies forming geographical features such as oceans, rivers, [and] lakes,’ or ‘the flowing or moving masses, as of waves or floods, making up such streams or ***769** bodies,’ ” *ante*, at 2220 (quoting Webster’s New International Dictionary 2882 (2d ed.1954) (hereinafter Webster’s Second)), the plurality would conclude that the phrase “navigable waters” permits Corps and EPA jurisdiction only over “relatively permanent, standing or flowing bodies of water,” *ante*, at 2221-a category that in the plurality’s view includes “seasonal” rivers, that is, rivers that carry water continuously except during “dry months,” but not intermittent or ephemeral streams, *ante*, at 2220-2222, and n. 5. Second, the plurality asserts that wetlands fall within the Act only if they bear “a continuous surface connection to bodies that are ‘waters of the United States’ in their own right”—waters, that is, that satisfy the plurality’s requirement of permanent standing water or continuous flow. *Ante*, at

2226-2227.

The plurality’s first requirement—permanent standing water or continuous flow, at least for a period of “some months,” *ante*, at 2220-2222, and n. 5—makes little practical sense in a statute concerned with downstream water quality. The merest trickle, if continuous, would count as a “water” subject to federal regulation, while torrents thundering at irregular intervals through otherwise dry channels would not. Though the plurality seems to presume that such irregular flows are too insignificant to be of concern in a statute focused on “waters,” that may not always be true. Areas in the western parts of the Nation provide some examples. The Los Angeles River, for instance, ordinarily carries only a trickle of water and often looks more like a dry roadway than a river. See, e.g., B. Gumprecht, *The Los Angeles River: Its Life, Death, and Possible Rebirth* 1-2 (1999); Martinez, *City of Angels’ Signature River Tapped for Rebirth*, *Chicago Tribune*, Apr. 10, 2005, section 1, p. 8. Yet it periodically releases water volumes so powerful and destructive that it has been encased in concrete and steel over a length of some 50 miles. See Gumprecht, *supra*, at 227. Though this particular waterway might satisfy the plurality’s test, it is illustrative of what often-dry watercourses ***770** can become when rain waters flow. See, e.g., County of Los Angeles Dept. of Public Works, Water Resources Division: 2002-2003 Hydrologic Report, Runoff, Daily Discharge, F377-R BOUQUET CANYON CREEK at Urbandale Avenue 11107860 Bouquet Creek Near Saugus, CA, <http://ladpw.org/wrd/report/0203/runoff/dischARGE.cfm> (indicating creek carried no flow for much of the year but carried 122 cubic feet per second on Feb. 12, 2003).

To be sure, Congress could draw a line to exclude irregular waterways, but nothing in the statute suggests it has done so. Quite the opposite, a full reading of the dictionary definition precludes the plurality’s emphasis on permanence: The term “waters” may mean “flood or inundation,” Webster’s Second 2882, events that are impermanent by definition. Thus, although of course the Act’s use of the adjective “navigable” indicates a focus on waterways rather than floods, Congress’ use of “waters” instead of “water,” *ante*, at 2220, does not necessarily carry the connotation of “relatively permanent, standing or flowing bodies of water,” *ante*, at 2221. (And contrary to the plurality’s suggestion, *ante*, at 2221, n. 4, there is no

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indication in the dictionary that the “ ‘flood or inundation’ ” **2243 definition is limited to poetry.) In any event, even granting the plurality's preferred definition—that “waters” means “water ‘[a]s found in streams and bodies forming geographical features such as oceans, rivers, [and] lakes,’ ” *ante*, at 2220 (quoting Webster's Second 2882)—the dissent is correct to observe that an intermittent flow can constitute a stream, in the sense of “ ‘[a] current or course of water or other fluid, flowing on the earth,’ ” *ante*, at 2221, n. 6 (quoting Webster's Second 2493), while it is flowing. See *post*, at 2260 (also noting Court's use of the phrase “ ‘intermittent stream’ ” in *Harri-sonville v. W.S. Dickey Clay Mfg. Co.*, 289 U.S. 334, 335, 53 S.Ct. 602, 77 L.Ed. 1208 (1933)). It follows that the Corps can reasonably interpret the Act to cover the paths of such impermanent streams.

*771 Apart from the dictionary, the plurality invokes *Riverside Bayview* to support its interpretation that the term “waters” is so confined, but this reliance is misplaced. To be sure, the Court there compared wetlands to “rivers, streams, and other hydrographic features more conventionally identifiable as ‘waters.’ ” 474 U.S., at 131, 106 S.Ct. 455. It is quite a stretch to claim, however, that this mention of hydrographic features “echoe[s]” the dictionary's reference to “ ‘geographical features such as oceans, rivers, [and] lakes.’ ” *Ante*, at 2222 (quoting Webster's Second 2882). In fact the *Riverside Bayview* opinion does not cite the dictionary definition on which the plurality relies, and the phrase “hydrographic features” could just as well refer to intermittent streams carrying substantial flow to navigable waters. See Webster's Second 1221 (defining “hydrography” as “[t]he description and study of seas, lakes, rivers, and other waters; specif [ically] ... [t]he measurement of flow and investigation of the behavior of streams, esp[ecially] with reference to the control or utilization of their waters”).

Also incorrect is the plurality's attempt to draw support from the statutory definition of “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). This definition is central to the Act's regulatory structure, for the term “discharge of a pollutant” is defined

in relevant part to mean “any addition of any pollutant to navigable waters from any point source,” § 1362(12). Interpreting the point-source definition, the plurality presumes, first, that the point-source examples describe “watercourses through which *intermittent* waters typically flow,” and second, that point sources and navigable waters are “separate and distinct categories.” *Ante*, at 2223. From this the *772 plurality concludes, by a sort of negative inference, that navigable waters may not be intermittent. The conclusion is unsound. Nothing in the point-source definition requires an intermittent flow. Polluted water could flow night and day from a pipe, channel, or conduit and yet still qualify as a point source; any contrary conclusion would likely exclude, among other things, effluent streams from sewage treatment plants. As a result, even were the statute read to require continuity of flow for navigable waters, certain water-bodies could conceivably constitute both a point source and a water. At any rate, as the dissent observes, the fact that point sources may carry continuous flow undermines the plurality's conclusion that covered “waters” under the Act may not be discontinuous. See *post*, at 2260.

**2244 The plurality's second limitation-exclusion of wetlands lacking a continuous surface connection to other jurisdictional waters-is also unpersuasive. To begin with, the plurality is wrong to suggest that wetlands are “*indistinguishable*” from waters to which they bear a surface connection. *Ante*, at 2234. Even if the precise boundary may be imprecise, a bog or swamp is different from a river. The question is what circumstances permit a bog, swamp, or other nonnavigable wetland to constitute a “navigable water” under the Act-as § 1344(g)(1), if nothing else, indicates is sometimes possible, see *supra*, at 2241. *Riverside Bayview* addressed that question and its answer is inconsistent with the plurality's theory. There, in upholding the Corps' authority to regulate “wetlands adjacent to other bodies of water over which the Corps has jurisdiction,” the Court deemed it irrelevant whether “the moisture creating the wetlands ... find[s] its source in the adjacent bodies of water.” 474 U.S., at 135, 106 S.Ct. 455. The Court further observed that adjacency could serve as a valid basis for regulation even as to “wetlands that are not significantly intertwined with the ecosystem of adjacent waterways.” *Id.*, at 135, n. 9, 106 S.Ct. 455. “If it is reasonable,” the Court explained, “for the Corps to conclude that in the majority *773 of cases, adjacent wetlands have significant effects on water quality and

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the aquatic ecosystem, its definition can stand.” *Ibid.*

The Court in *Riverside Bayview* did note, it is true, the difficulty of defining where “water ends and land begins,” *id.*, at 132, 106 S.Ct. 455, and the Court cited that problem as one reason for deferring to the Corps’ view that adjacent wetlands could constitute waters. Given, however, the further recognition in *Riverside Bayview* that an overinclusive definition is permissible even when it reaches wetlands holding moisture disconnected from adjacent water bodies, *id.*, at 135, and n. 9, 106 S.Ct. 455, *Riverside Bayview*’s observations about the difficulty of defining the water’s edge cannot be taken to establish that when a clear boundary is evident, wetlands beyond the boundary fall outside the Corps’ jurisdiction.

For the same reason *Riverside Bayview* also cannot be read as rejecting only the proposition, accepted by the Court of Appeals in that case, that wetlands covered by the Act must contain moisture originating in neighboring waterways. See *id.*, at 125, 134, 106 S.Ct. 455. Since the Court of Appeals had accepted that theory, the Court naturally addressed it. Yet to view the decision’s reasoning as limited to that issue—an interpretation the plurality urges here, *ante*, at 2231-2232, n. 13—would again overlook the opinion’s broader focus on wetlands’ “significant effects on water quality and the aquatic ecosystem,” 474 U.S., at 135, n. 9, 106 S.Ct. 455. In any event, even were this reading of *Riverside Bayview* correct, it would offer no support for the plurality’s proposed requirement of a “continuous surface connection,” *ante*, at 2227. The Court in *Riverside Bayview* rejected the proposition that origination in flooding was necessary for jurisdiction over wetlands. It did not suggest that a flood-based origin would not support jurisdiction; indeed, it presumed the opposite. See 474 U.S., at 134, 106 S.Ct. 455 (noting that the Corps’ view was valid “even for wetlands that are not the result of flooding or permeation” (emphasis added)). Needless to say, a continuous connection *774 is not necessary for moisture in wetlands to result from flooding—the connection might well exist only during floods.

SWANCC, likewise, does not support the plurality’s surface-connection requirement. *SWANCC*’s holding that “nonnavigable, isolated, intrastate waters,” 531 U.S., at 171, 121 S.Ct. 675, are not “navigable” *2245 waters” is not an explicit or implicit overruling of *Riverside Bayview*’s approval of adjacency as a factor

in determining the Corps’ jurisdiction. In rejecting the Corps’ claimed authority over the isolated ponds in *SWANCC*, the Court distinguished adjacent nonnavigable waters such as the wetlands addressed in *Riverside Bayview*. 531 U.S., at 167, 170-171, 121 S.Ct. 675.

As *Riverside Bayview* recognizes, the Corps’ adjacency standard is reasonable in some of its applications. Indeed, the Corps’ view draws support from the structure of the Act, while the plurality’s surface-water-connection requirement does not.

As discussed above, the Act’s prohibition on the discharge of pollutants into navigable waters, 33 U.S.C. § 1311(a), covers both the discharge of toxic materials such as sewage, chemical waste, biological material, and radioactive material and the discharge of dredged spoil, rock, sand, cellar dirt, and the like. All these substances are defined as pollutants whose discharge into navigable waters violates the Act. §§ 1311(a), 1362(6), (12). One reason for the parallel treatment may be that the discharge of fill material can impair downstream water quality. The plurality argues otherwise, asserting that dredged or fill material “does not normally wash downstream.” *Ante*, at 2228. As the dissent points out, this proposition seems questionable as an empirical matter. See *post*, at 2263-2264. It seems plausible that new or loose fill, not anchored by grass or roots from other vegetation, could travel downstream through waterways adjacent to a wetland; at the least this is a factual possibility that the Corps’ experts can better assess than can the plurality. Silt, whether from natural or human sources, is a major factor *775 in aquatic environments, and it may clog waterways, alter ecosystems, and limit the useful life of dams. See, e.g., Fountain, Unloved, But Not Unbuilt, N.Y. Times, June 5, 2005, section 4, p. 3, col. 1; DePalma, Rebuilding a River Upstate, For the Love of a Tiny Mussel, N.Y. Times, Apr. 26, 2004, section B, p. 1, col. 2; MacDougall, Damage Can Be Irreversible, Los Angeles Times, June 19, 1987, pt. 1, p. 10, col. 4.

Even granting, however, the plurality’s assumption that fill material will stay put, Congress’ parallel treatment of fill material and toxic pollution may serve another purpose. As the Court noted in *Riverside Bayview*, “the Corps has concluded that wetlands may serve to filter and purify water draining into adjacent bodies of water,” 33 CFR § 320.4(b)(2)(vii)